

ENTERED

February 23, 2023

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
VICTORIA DIVISION

JEROME LEWIS LEITA,

Petitioner,

VS.

BOBBY LUMPKIN,

Respondent.

§
§
§
§
§
§
§
§

Civil Case No. 6:21-CV-00059

**ORDER ACCEPTING FINDINGS, CONCLUSIONS, AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

Pending before the Court is the May 13, 2022 Memorandum and Recommendation (“M&R”) prepared by Magistrate Judge Julie K. Hampton. (Dkt. No. 25). Magistrate Judge Hampton made findings and conclusions and recommended that Respondent’s Motion for Summary Judgment be granted. (*Id.*). Magistrate Judge Hampton further recommended that the Court deny a Certificate of Appealability. (*Id.*).

The Parties were provided proper notice and the opportunity to object to the M&R. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). On May 31, 2022, Leita filed five objections. (Dkt. No. 27). First, Leita argues that Magistrate Judge Hampton lacked jurisdiction to prepare the M&R because Leita never gave his consent to proceed before a magistrate judge. (*Id.* at 1–3, 9). Second, Leita argues that Respondent never sent him the “documents required by law” that formed the “basis for Respondent’s Motion for Summary Judgment,” and as such, the Motion should be struck. (*Id.* at 10–11). Third, Leita argues that he obtained “newly-discovered evidence from the Victoria Police Department in 2020” with which “[n]o jury would have found [him] guilty. (*Id.* at 12–

13). Fourth, Leita argues that his claims are not time barred because the order of deferred adjudication is not a final judgment, and the limitation period did not begin to run until his community supervision was revoked. (*Id.* at 14–15). Fifth, Leita notes that he was denied access to the TDCJ law library from March 2020 to April 2021 due to COVID-19, which warrants tolling the limitation period. (*Id.* at 15).

In accordance with 28 U.S.C. § 636(b)(1)(C), the Court is required to “make a de novo determination of those portions of the [magistrate judge’s] report or specified proposed findings or recommendations to which objection [has been] made.” After conducting this de novo review, the Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” *Id.*; *see also* Fed. R. Civ. P. 72(b)(3).

The Court has carefully considered de novo those portions of the M&R to which timely objection was made, and reviewed the remaining proposed findings, conclusions, and recommendations for plain error. Finding no error, the Court accepts the M&R and adopts it as the opinion of the Court. It is therefore ordered that:

- (1) Magistrate Judge Hampton’s M&R, (Dkt. No. 25), is **ACCEPTED** and **ADOPTED** in its entirety as the holding of the Court; and
- (2) Respondent’s Motion for Summary Judgment, (Dkt. No. 17), is **GRANTED**.

It is SO ORDERED.

Signed on February 23, 2023.

Drew B Tipton
DREW B. TIPTON
UNITED STATES DISTRICT JUDGE